

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:09-cv-172-FDW-DSC**

JOHN PARKS SIMPSON, et al.,

)

Plaintiffs,

)

vs.

)

AIR LIQUIDE AMERICA, LP, et al.,

)

Defendants.

)

NOTICE

THIS MATTER is before the Court *sua sponte* in anticipation of the Summary Judgment hearing scheduled for Thursday, December 9, 2010 at 9:00 am before the undersigned. In the Court's view, Defendant Porter Warner Industries, LLC's Motion for Summary Judgment (Doc. No. 72) turns principally on whether the statutes of limitation for Plaintiffs' claims have run, based on the accrual date of Plaintiffs' injuries. Accordingly, the parties should be prepared to present evidence regarding when Plaintiff John Parks Simpson was first diagnosed with silicosis.¹

Additionally, the parties are hereby ORDERED to submit supplemental briefs addressing what effect the filing of the instant action in April 2009, prior to the voluntary dismissal of Plaintiffs' Texas suit has, if any, on the tolling of the statute of limitations for Plaintiffs' claims.² The briefings are limited to **2,500 words** for each party and must be submitted **no later than 12:00 pm on Tuesday, December 7, 2010.**

¹ The evidence need not be trial quality. Admissions and answers to interrogatories from discovery may be sufficient.

² Plaintiffs may not take this opportunity to address their arguments in opposition to Defendant's Motion for Summary Judgment, as their memorandum has been stricken by the Court's Order of October 13, 2010. Instead, Plaintiffs' brief should be directed to the narrow issue prescribed.

IT IS SO ORDERED.

Signed: December 1, 2010



Frank D. Whitney
United States District Judge

